



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY *Mwo*

DATE: AUGUST 17, 2005

SUBJECT: COMMENT: DRAFT AO 2005-07

Transmitted herewith is a timely submitted comment received from the requestor, Mr. Andy Mayberry, regarding the above-captioned matter.

Proposed Advisory Opinion 2005-07 is on the agenda for Thursday, August 18, 2005.

Attachment

Date: August 17, 2005

To: Mary Dove,
Commission Secretary

2005 AUG 17 A 9:38

From: Andy Mayberry,
Andy Mayberry for Congress Committee



Please accept the following comments regarding the Draft Advisory Opinion 2005-07 issued August 11, 2005.

First, let me thank the Office of General Counsel and the Commission for your review of this situation. It is my opinion, as an announced candidate for Federal office, that most of what you assert in this draft is an accurate interpretation of the Code of Federal Regulations. However, I wish to submit for your consideration additional perspective and points for review before a final Advisory Opinion is issued:

Based strictly on interpretation of the Code of Federal Regulations, as it reads today, I would contest one of the assertions made in this Draft Advisory Opinion. Regarding the fourth type of communication in the "Content Standard" section on page 6 of the Draft Advisory Opinion, it is clear that the communication must be "directed to voters" in the candidate's jurisdiction to meet this standard. With regard to *The Spirit Magazine*, this publication has primary circulation within the 2nd Congressional District, but also extends beyond the boundaries of that district to a substantial degree. (Approximately 10 percent of readers are outside the 2nd District.) Perhaps more important is the fact that it is not "directed to voters" but instead is available for pick-up by anyone, regardless of whether they vote or not. One's voting record and history are not criteria for *The Spirit Magazine's* circulation and are not part of any demographic information recorded or maintained by Spirit Publications, Inc., or its owners. *The Spirit Magazine* is available to anyone, whether they live in the district or not, and is not marketed to voters to any greater degree than to non-voters. With regard to this "directed to voters" statement in the Draft Advisory Opinion, a similar argument holds true for *The East Ender* newspaper.

Because *The Spirit Magazine* and *The East Ender* newspaper are not

communication pieces that are "directed to voters" by definition, I do not believe this fourth communication type in the Content Standard section is applicable to these publications. I hope you will re-consider this point with regard to how it applies to each of the two publications mentioned.

That is the only issue I wish to contest at this point with regard to how the Code of Federal Regulations is interpreted in this Draft Advisory Opinion. However, I would like to make a few additional comments with regard to the overall opinion being issued and to the intent of the applicable Federal Regulations.

As you know, the First Amendment to the Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Unfortunately, I believe my First Amendment rights are in great peril, according to the Draft Advisory Opinion, as well as my rights to continue providing a good, honest living for my family in the manner I have practiced for the past several years.

If I understand correctly, this Draft Advisory Opinion indicates that I will have a number of restrictions regarding the content of any of my opinion columns that appear in publications I own in order for those opinion columns to not be considered as campaign contributions or expenditures. However, it is also my understanding that these same opinion columns, commentaries, and editorials would be exempt from the definition of "contribution" and "expenditure" if they appeared in publications that I do not own.

Additionally, regardless of content, for several months during 2006 (120 days before either a primary or general election), according to this Draft Advisory Opinion I will not be able to continue to practice this years-long, routine and standard procedure of writing a bylined column or other articles for the publications produced by my business, Spirit Publications, Inc. In fact, it appears according to this Draft Advisory Opinion that my likeness and name must be removed for a period of several months in every form from the publications that are my livelihood -- my primary source of income and the

means by which I put food on the table and roof over my family's heads. To be forced to discontinue this established practice for these publications will:

- Impair this business entity and potentially do harm to its revenue (and subsequently to my ability to be a good provider for my family);
- Abridge freedom of the press;
- Abridge my personal freedom of speech;
- Prohibit my free exercise of religion (through *The Spirit Magazine*, which has a Christian-based mission)

When interpreting rules, regulations and law, I believe it is vital that the "intent" is never disregarded. Surely, the intent of the Code of Federal Regulations was never to supercede First Amendment rights or others guaranteed by the Constitution. I ask you to please consider these points and the precedent you may set before issuing a final Advisory Opinion in this matter.

Thank you for your time and consideration.

CC: Office of General Counsel